

conference and encouraged Fowler to attend it. Crain sent the memo to Berger for vetting before submitting it to his DNC superiors.⁵³⁷ Fowler and his staff may have had their own concerns about Fowler attending the NIGA convention based upon his perceptions of the Hudson outcome, especially in view of the information O'Connor had supplied Fowler in July about the immediate fall-out of the decision. *See supra* at 313-15. Still, there is no evidence that prior to the Aug. 15 Fowler-Berger phone call the DNC had any information that the applicants were contemplating a lawsuit, much less one naming Fowler as a defendant.

On Aug. 15, however, the DNC's focus became clear when Crain called Berger about Fowler's concern over potential Hudson litigation. At 5:25 p.m. that day, Crain left a message with Berger's assistant reading in part:

- (1) Don's only concern – re Milwaukee is that he's worried that the Pat O'Connor / Dog track issue would come up. He doesn't want to be in hot water.

The next day, Mercer entered this dialogue, leaving a message with Berger's assistant that read in part :

- (1) Follow up on conversation of Adam + you re: Milwaukee Event – Fowler was going to be named in a suit about the dog track. Tribal leaders in that suit must not be in attendance.
- (2) Also – no money has come in the door yet – who will be the person responsible for the \$ raised out there

(Emphasis in original.) Crain also left a message on Aug. 16 asking Berger to speak with Mercer. Later that day, Crain left Berger a second message on this subject, which stated:

Looks like Fowler is not going to go

⁵³⁷No copy of this memo has been located.